

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2946 OF 1989

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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G.S.R.T.C.  
versus  
ASMANMIYA CHHADUMIYA MALEK

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Appearance:

MR HARDIK RAWAL for petitioner  
MR PRABHAKAR UPADHYAY for respondent

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Coram: MR.JUSTICE S.K. Keshote,J  
Date of decision: 31/07/2000

C.A.V. JUDGMENT

#. Having heard the learned counsel for the parties, I

am satisfied that the award of the Labour Court, Nadiad, in Reference (LCN) No.844/83 dated 18.1.88 is wholly perverse and it cannot be allowed to stand.

#. The respondent-workman, a conductor in the S.T.bus of the Corporation came to be dismissed by the Corporation under the order dated 10th March 1983 from the services after holding departmental inquiry in which charges of misappropriation of money of the Corporation which were levelled against him were found proved. Industrial dispute has been raised by workman which has been referred to the Labour Court and under the impugned award, same has been decided in favour of workman. The order for reinstatement without backwages has been made with all other consequential benefits.

#. The Labour Court has accepted that the workman has deposited Rs.421/- from his private amount. In his cross-examination, he has admitted that he deposited less amount because his health was not good and it was stated under duress. The Labour Court has recorded categorical finding that it is a clear case where the respondent-workman has made temporary misappropriation of Corporation money. From ex.11, the representative of the respondent-workman admitted legality of the departmental inquiry conducted by the Corporation. From ex.8 produced by the workman, it is proved that findings arrived at by the inquiry officer on the basis of evidence produced in the inquiry are just and legal. The Labour Court has further accepted that the past service record of the workman is also not good. After recording these findings, the Labour Court has jumped to the conclusion that in its view the order of dismissal passed against the workman is on higher side and in exercise of the powers vested under provisions of Section 11A of the Industrial Disputes Act, 1947, it has considered it to be a fit case to reduce punishment imposed. The Labour Court further said, "I feel that one more chance to improve is required to be given to the applicant and removal or dismissal of the applicant from service would result into taking away bread and butter permanently from the applicant and his family members". The Labour Court further said, "punishment imposed on the applicant is disproportionate to the misconduct of the applicant and hence I find that if the entire back wages from the date of his dismissal from service till reinstatement is deducted it would be just and proper and the applicant will get appropriate punishment for his misconduct and he will also get an opportunity to improve and hence I pass the following order: The opponent Gujarat State Road Transport Corporation is ordered to reinstate the

applicant Shri Asmanmiya Chhadumiya Malek on his original post with continuity of service within 30 days from the date of receipt of copy of the order. There is no question for payment of back wages. No order as to costs."

#. Holding of backwages is not punishment. The learned counsel for the respondent, on being put by the court, has failed to show that under the Regulations of the Corporation or Standing Order holding of backwages is provided as one of the penalties. The Labour Court has not considered that misappropriation of Corporation money is serious and grave misconduct and more so earlier when the past service record of the applicant is also not good, how far it is justified to give him one more opportunity to commit further misconduct. In the case where misappropriation of Corporation's money is made, on proof of it, minimum punishment should have been removal or dismissal of the employee-workman. It is not the power of the Labour Court under Section 11A of the Industrial Disputes Act, 1947, to pass any award. Once on inquiry which was held to be fair and reasonable this charge is proved and disciplinary authority considers it to be a fit case to dismiss the workman from service, no interference whatsoever could have been made therein by the Labour Court. It is not the sweet will of the Labour Court to pass any order in the matter of quantum of punishment. In the matter of misappropriation of the Corporation money and if such lenient view is taken by Labour Court, it will be nothing but only a misuse of the powers conferred upon it u/s.11A of the Industrial Disputes Act, 1947. The Labour Court has failed to give out any reason, good, bad or indifferent how this penalty imposed upon the respondent-workman is disproportionate to the guilt. In fact, only to give one more chance to improve, this order has been passed. This approach of the Labour Court that if this punishment is imposed it will result in taking away bread and butter permanently from the workman and his family members is wholly perverse. If such approach is made, then penalties of dismissal, removal or termination of the workmen from services will become nugatory. These are the three major penalties which on proof of grave and serious misconduct can be given to the delinquent and misappropriation of Corporation's money is a misconduct of grave and serious nature for which no exception could have been made. It is not the penalty which is totally disproportionate or shocking to the conscience of the Labour Court. In the matter of punishment, sole domain is of the disciplinary authority to decide what punishment is to be imposed for proved misconduct and in such matters, interference only

in extreme cases is called for and this is not a case falling under this category. The Corporation had earlier already given more than necessary opportunity to the workman for improvement and no further indulgence was called for at the hands of the Labour Court in this case.

#. In the result, this special civil application succeeds and the same is allowed and the award of the Labour Court, Nadiad, in Reference (LCN) No.844/83 dated 18.1.88 is quashed and set aside. Rule is made absolute accordingly. No order as to costs.

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(sunil)